

Amendments to the Claims:

This listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of Claims:

Claim 1 (Canceled)

Claim 2 (Currently Amended): An encoder having a code pattern provided on a rotary disk, which detects the rotation speed and rotational position of the rotary disk by receiving light coming from a light emitting element and transmitted through or reflected from said code pattern by a light receiving element; wherein a fixed slit which is disposed between said rotary disk and said light receiving element so that a plurality of light receiving windows through which light reflected from or transmitted through the code pattern passes is disposed so as to have a difference in phase at different positions in the radial direction of the rotary disk; the length of said light receiving windows in the radial direction is set so as to gradually become shorter from the inner peripheral side toward the outer peripheral side; and the opening area of said light receiving windows at the inner peripheral side of said fixed slit is set to be equal to that at the outer peripheral side, wherein said light receiving windows are a group of light receiving windows, consisting of a plurality of light receiving windows disposed on the same radius at the same phase, and the total sum of the opening areas of light receiving windows of the same phase and the total sum of light receiving windows of [the other] another phase are set to be equal to each other, wherein [said groups of light receiving windows are disposed in a plurality on the same radius at the same phase] a plurality of groups of light receiving

windows are disposed at each of said different positions in the radial direction of the rotary disk and wherein groups of light receiving windows at the same radial position have the same phase.

Claims 3 - 4 (Canceled)

Claim 5 (Currently Amended): An encoder having a code pattern provided on a rotary disk, which detects the rotation speed and rotational position of the rotary disk by receiving light coming from a light emitting element and transmitted through or reflected from said code pattern by a light receiving elements; wherein said light receiving elements have a plurality of light receiving portions to receive light, coming from a light emitting element, transmitted from or reflected from said code pattern, which are disposed so that they have differences in phase in different positions in the radial direction of said rotary disk, the length of said rotary disk of the light receiving portions in the radial direction is set so as to gradually become shorter from the inner peripheral side toward the outer peripheral side; the area of the light receiving portion at the inner peripheral side of the light receiving element is set to be equal to that at the outer peripheral side, wherein said light receiving portions are a group of light receiving portions consisting of a plurality of light receiving portions disposed on the same radius at the same phase, and the total sum of the opening areas of light receiving portions of the same phase and the total sum of light receiving portions of [the other] another phase are set to be equal to each other, wherein [said groups of light receiving portions are disposed in a plurality on the same radius at the same phase] a plurality of groups of light receiving

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portions are disposed at each of said different positions in the radial direction of the rotary disk and wherein groups of light receiving portions at the same radial position have the same phase.

Claim 6 (Canceled)